

ORIGINAL

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of

Federal-State Joint Board  
on Universal Service

CC Docket No. 96-436

To: The Commission

**COMMENTS OF THE  
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION**

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## **SUMMARY**

Universal service has long been pursued by federal and state regulators, but always through policies which presupposed a monopoly provider of local telephone services. Now, under the Telecommunications Act of 1996, universal service policies must be redesigned around a new paradigm of local service competition. The Joint Board has taken a significant first step along that path, and CompTel commends the Board for its thorough analysis of universal service reform. CompTel generally supports the Joint Board's recommendations concerning how to restructure the high cost and low-income funds, and how to collect support contributions from telecommunications providers.

In response to the Common Carrier Bureau's questions, CompTel submits that one of the most central principles to the success of universal service reform is to ensure that the funds are identified, collected, and distributed in a competitively neutral manner. This standard means that a mechanism should not benefit or burden a class of carriers out of proportion to the extent that it participates in the telecommunications marketplace. The issue manifests itself in a number of areas, from how to collect support payments, to the basis on which telecommunications providers pay into the fund, to the eligibility criteria for receiving support from the universal service fund. As one prong of the "competition trilogy," universal service policies must operate in a way that promotes competition for all carriers and does not favor one class of carriers over another.

One significant issue which the Joint Board left for further comment is whether interstate providers should contribute to the universal service fund on the basis of their interstate revenue or on the basis of both their interstate and intrastate revenues. CompTel submits that the Commission has jurisdiction to determine the relative size of each provider's contribution on the basis of their total interstate and intrastate revenues and that the

Commission as a policy matter should determine carrier contributions on that basis in order to avoid disproportionately burdening non-LEC providers with universal service funding obligations.

Regarding the high cost fund, CompTel agrees with the Joint Board's recommendation outlining the methodology of this support mechanism. It is critical that the cost of serving an area be measured using forward-looking economic costs and that a cost proxy model be used to identify such costs. By focusing on the forward-looking costs of an efficient provider -- rather than the embedded costs of particular carriers -- the Commission can ensure that universal service funding needs will be kept at reasonable levels and that it does not grant special privileges to incumbent LECs.

CompTel also agrees that high cost areas should be determined in comparison to a single national benchmark level. The Joint Board's proposal to use a revenues-based benchmark appears consistent with the goals of universal service. If such a benchmark is used, it should be based upon the total revenues a carrier can expect to receive from all services provided to a typical customer, including (1) the "core" local exchange services, (2) discretionary services such as call waiting, call forwarding, and voice mail, (3) local and intraLATA toll usage, and (4) directory assistance and yellow pages advertising revenues. The benchmark should be set using a representative sample of revenues providers could receive in *urban* areas, because a number of rural areas already have local telephone services priced below comparable urban area rates.

Further, CompTel supports an interpretation of Section 214(e) that allows carriers to be eligible to receive universal service support if they purchase unbundled network elements at

TELRIC cost from an ILEC. CompTel also supports the Joint Board's recommendation against adding eligibility criteria not included in the statute.

CompTel strongly opposes any proposal to restrict the way in which a contributing provider may recover universal service support obligations from its end users. Section 254's requirement that universal service support mechanisms be explicit cannot be met if those paying for universal service are prohibited from deciding how to collect the revenues from their end users. In any event, any attempt to silence providers is an infringement upon their rights under the First Amendment of the Constitution. To avoid these obstacles, CompTel recommends that the Commission make clear that telecommunications carriers may identify universal service funding obligations as a separate line item on customer bills.

Finally, CompTel recommends that issues relating to the appropriate size and purpose of the SLC be reserved for consideration in the Commission's upcoming access charge reform docket. These issues most directly relate to the access charge structure, not universal service, and the Commission should not prejudge its access reform proceeding here.

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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Federal-State Joint Board	)	CC Docket No. 96-45
on Universal Service	)	
	)	

To: The Commission

**COMMENTS OF THE  
COMPETITIVE TELECOMMUNICATIONS ASSOCIATION**

The Competitive Telecommunications Association ("CompTel"), by its attorneys, respectfully submits these comments in response to the Recommended Decision of the Federal-State Joint Board on Universal Service.<sup>1</sup> CompTel is the principal industry association of competitive telecommunications providers, with approximately 175 members offering a full variety of telecommunications services. Many CompTel members have pursued a strategy of entering the local exchange services market pursuant to the pro-competitive policies of the Telecommunications Act of 1996. CompTel is committed to the goal of ensuring all Americans have the opportunity to obtain quality telecommunications services at reasonable prices, and supports the efforts of this Commission to implement universal service reform for a full-service competitive environment. For the reasons explained below, CompTel supports a number of the Joint Board's recommendations regarding the definition and operation of the high cost and low income support funds.

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<sup>1</sup> *Federal-State Joint Board on Universal Service*, Recommended Decision, CC Docket NO. 96-45, FCC 96J-3 (rel. Nov. 8, 1996); *see* Public Notice, DA 96-1891 (Nov. 18, 1996).

CompTel offers the following suggestions for improving upon the Joint Board's recommendations in order to make the policies more consistent with competitive markets.

## **I. INTRODUCTION**

The Commission's task is an important one. Section 254 represents a historic change in this country's long-standing policy of promoting the universal availability of telephone services. As one element of what the Commission has termed the "competition trilogy," federal universal service support mechanisms must be reformed to preserve and advance the goal of universal service while also promoting the development of competition in local telecommunications services. Central to these goals are the requirements that federal universal service support mechanisms be explicit, rather than implicit, and that they operate in a non-discriminatory, competitively neutral manner.<sup>2</sup> In structuring each mechanism to support universal service, the Commission must be careful not to distort competition by inequitably burdening one segment of the telecommunications market with support obligations or by favoring one class of market participants with support payments.

The Commission now has before it a comprehensive analysis and recommendation of the Federal-State Joint Board on Universal Service. CompTel commends the Joint Board on its thorough and clear explication of the issues that must be addressed in order to implement Section 254. CompTel supports the general thrust of the Joint Board's recommended changes to the high cost and low-income support funds. CompTel agrees that the high cost fund should support only the forward-looking, economic costs of offering the supported services and agrees that costs in non-rural areas should be determined for all providers using

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<sup>2</sup> See, e.g., 47 U.S.C. §§ 254(b)(4)-(5), 254(d).

a cost proxy model.<sup>3</sup> In addition, CompTel agrees that a revenue-based assessment is appropriate and agrees with the Joint Board's interpretation of the eligibility criteria of Section 214(e).

In these comments, CompTel offers its views on issues specifically raised by the Common Carrier Bureau in its request for additional comment and suggests some modifications to the Joint Board's recommendations. CompTel believes that the Commission should look to both the interstate and intrastate revenues of a provider in order to more accurately reflect the relative participation of all providers in the telecommunications industry. Such an approach is consistent with the Commission's statutory authority, will not harm state universal service programs, and will further the competitive neutrality goals of Section 254. In addition, CompTel believes that the Commission should use a uniform national benchmark to determine the level of assistance needed in high cost areas. Such a benchmark could be set based upon the projected revenues of a local service provider in a representative sample of urban service areas, and, if so, should include all revenue that is typically associated with local telecommunications services, including adjunct services like call waiting and including local and intraLATA toll revenues. Finally, CompTel believes that a telecommunications provider should have the flexibility to determine how to recover its universal service support obligations from its customers, including the option of identifying universal service support as a separate line item on customer bills.

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<sup>3</sup> CompTel also agrees with the definition of the "core" services that should be supported and agrees that the Lifeline and Link-Up programs are sufficient to serve the goals of Section 254 for low-income subscribers.



## **II. COMPETITIVE NEUTRALITY IS A CENTRAL PRINCIPLE THAT TRANSCENDS ALL UNIVERSAL SERVICE ISSUES**

The Bureau's *Public Notice* requests additional comment on how competitive neutrality should be defined and applied in the policies adopted by the Commission. CompTel believes that ensuring competitive neutrality in universal service policies is vital to the success of Section 254 and to the development of an environment in which local service competition may take hold. By developing universal service support mechanisms that do not favor any classes of market participants, the Commission can do its best to ensure that competition is the defining mechanism by which consumers are assured of the ubiquitous availability of high quality, reasonably priced telecommunications services, and that universal service functions as a "safety net" where competition is unable to produce the desired results. CompTel therefore supports the Joint Board's recommendation that "competitive neutrality" be included as an explicit principle upon which universal service policies should be based.<sup>4</sup>

To be "competitively neutral," universal service support mechanisms must not favor one type of services over another or one class of service providers over others in either the definition, allocation, collection, or distribution of universal service support payments. The burden of universal service support should be apportioned fairly among all providers, in proportion to the extent of their participation in the telecommunications industry. Telecommunications providers should not be able manipulate regulatory classifications or jurisdictional boundaries to shield themselves from the obligation to contribute to universal services. Similarly, competitive neutrality requires that support funds from the universal service mechanisms be available to all who meet clearly identified, objectively-applied

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<sup>4</sup> *Recommended Decision* at ¶ 23.

criteria, and that the support be available based on the number of eligible customers the provider serves. In addition, mechanisms should not be limited to any one particular technology or network architecture.

A concern for competitive neutrality pervades nearly every aspect of the universal service issues before the Commission. Although CompTel will discuss many of these issues in greater detail below, competitive neutrality requires the following aspects be included in the federal universal service program:

**Structure of Support Mechanisms** -- Support funding should be explicit, and should not be built into charges carriers impose on each other, such as access charges. A system of carrier-to-carrier payments disproportionately burdens resellers and new entrants in the local services market, which must obtain a number of essential services from incumbent LECs.

**Basis for Assessments** -- All providers should contribute on the basis of their telecommunications revenues, net of payments made to other telecommunications providers, in order to avoid double taxing resellers. In addition, the revenue base selected should include both interstate and intrastate revenues in order to avoid underestimating the extent of the participation of some providers in the telecommunications industry.

**Definition of High Cost Areas** -- The geographic regions used to identify "high cost" areas should be sufficiently small to target support only to those areas that need it. Large areas would inhibit competition by increasing a new entrant's costs if it must serve an entire area or by giving the incumbent an advantage because it receives support payments while the entrant serving a more narrowly-defined territory does not receive any support.

**Eligibility and Level of Support** -- Competitive neutrality requires that all telecommunications providers have an equal chance to provide the supported services and to

receive support for doing so. Support to an eligible provider should be based upon the number of subscribers to whom it provides the supported services. Support payments should be portable among carriers, so that a customer's choice of carriers will not be distorted by the universal service support.

### **III. CONTRIBUTIONS TO THE UNIVERSAL SERVICE FUND SHOULD BE BASED UPON A PROVIDER'S TOTAL INTERSTATE AND INTRASTATE REVENUES**

The most important issue left open by the Joint Board is the appropriate revenue base for assessing contributions from interstate telecommunications providers.<sup>5</sup> Although the Joint Board proposes that both interstate and intrastate revenues be included for purposes of funding the schools, libraries, and healthcare discounts, it makes no recommendation for purposes of funding the high cost and low-income programs.<sup>6</sup> CompTel recommends that all universal service support funding be based upon both the interstate and intrastate revenues of contributing carriers.

First, it is well within the Commission's jurisdiction to determine the magnitude of carrier contributions based upon both the interstate and intrastate revenues of contributing carriers. CompTel agrees with Commissioner Chong that Section 254(d) limits the universe of contributing carriers to "interstate providers" and requires that contributions be "equitable and nondiscriminatory" but does not in any other way limit the Commission's ability to determine the mechanism by which those providers will contribute.<sup>7</sup> Congress did not, for

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<sup>5</sup> *Recommended Decision*, ¶¶ 817-23.

<sup>6</sup> *Id.* at ¶ 817.

<sup>7</sup> *See* Separate Statement of FCC Commissioner Rachelle B. Chong, Concurring in Part, Dissenting in Part, at 12 ("Chong Statement").

example, restrict Section 254(d) to the *interstate revenues* of interstate providers, although it could have. Instead, the statute allows the Commission to determine the basis upon which interstate providers would contribute to universal service. As long as an entity is an "interstate provider" the Commission has jurisdiction to adopt any reasonable mechanism for ranking the size and relative contribution of these providers.

Second, it is critical that intrastate revenues be included with interstate revenues in order to avoid disproportionately burdening some classes of telecommunications providers. Use of total revenues does not expand the class of providers that must contribute to universal service. It only assists the Commission in apportioning the relative contributions among those entities. As CompTel emphasized earlier in these comments, this must be done in a competitively neutral manner. Indeed, the statute mandates that all providers make an "equitable and nondiscriminatory contribution" to universal service support.<sup>8</sup> If only interstate revenues are included in universal service support mechanisms, however, the burden of universal service support would fall disproportionately on providers of interexchange services because these revenues are much more likely to be interstate than intrastate. As a result, two carriers of approximately equal total revenues might contribute significantly different amounts simply because one primarily provides interexchange services. The carrier that offers other types of services, most notably, local exchange and intraLATA services, would escape federal universal service funding obligations from its activities almost entirely.<sup>9</sup> Such a result seriously misidentifies the actual extent to which the carriers use

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<sup>8</sup> 47 U.S.C. § 254(b)(4); *see also id.*, § 254(d).

<sup>9</sup> At the same time, these carriers are the most likely to receive federal universal service funding, because most of the "core" services will be intrastate in jurisdiction. *See Recommended Decision*, ¶ 46-52.

and benefit from the ubiquitous telephone network, and could give the intrastate service provider a significant competitive advantage as a result of its lower universal service contribution. By including both interstate and intrastate revenues, by contrast, the Commission would receive a more accurate picture of the provider's total participation in the telecommunications market and consequently of the level of contribution that would be equitable in the provider's situation.

The distortion caused by excluding a provider's intrastate revenues is significant. According to the Commission's study of TRS Fund data, incumbent local exchange carriers derive a significantly smaller percentage of their total revenues from interstate services than do other classes of carriers.<sup>10</sup> The RBOCs, for example, derive only 25.8% of their total revenue from interstate services and 75 percent from intrastate services.<sup>11</sup> Toll carriers, by contrast, had near exact opposite ratios: 76 percent of their revenues are derived from interstate services, while 24% comes from intrastate activities.<sup>12</sup> The RBOCs would have a significant competitive advantage in entering the interexchange market if 75 percent of their total resources were shielded from universal service funding obligations.

Finally, there is no principled reason to distinguish between the revenue basis used to support the discount for schools, libraries and healthcare providers from that used to fund the high cost and low-income support mechanisms. Although the goals of the programs differ, the statutory provisions concerning funding do not. All of these programs are subject to the same statutory requirement that contributions to universal service support be "equitable and

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<sup>10</sup> FCC, *Telecommunications Industry Revenue: TRS Fund Worksheet Data* (Industry Analysis Div. Feb. 1996).

<sup>11</sup> *Id.*, Table 18.

<sup>12</sup> *Id.*, Table 5.

nondiscriminatory."<sup>13</sup> Moreover, all of these programs are funded by the same class of carriers -- providers of interstate telecommunications services.<sup>14</sup> Nothing in the Act or its legislative history indicates that Congress intended to include all interstate and intrastate revenues for purposes of funding the educational and healthcare discounts, but to exclude intrastate revenues when assessing support for other programs. If, as the Joint Board recommends, educational and healthcare discounts should be funded through total interstate and intrastate revenues, so should support for the high cost and low-income funds.

#### **IV. THE JOINT BOARD'S RECOMMENDATIONS FOR THE HIGH COST FUND**

In the *Recommended Decision*, the Joint Board concluded that high cost areas should be determined by comparing the results of a cost proxy model in an area to a uniform nationwide benchmark.<sup>15</sup> The Joint Board concluded that the proper measure of cost is the forward-looking economic cost of developing and operating the network facilities used to provide the supported services, and endorsed the use of an appropriately-designed cost proxy model to determine these costs.<sup>16</sup> Further, the Joint Board recommended that these costs be compared to a national benchmark representing the amount of revenue the carrier could expect to recover from its service offerings to offset the costs of the supported services.<sup>17</sup>

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<sup>13</sup> See 47 U.S.C. §§ 254(b)(4), 254(d).

<sup>14</sup> *Id.*, § 254(d).

<sup>15</sup> *Recommended Decision*, ¶¶ 183-86.

<sup>16</sup> *Id.*, ¶¶ 269-70.

<sup>17</sup> *Id.*, ¶ 299.

### **A. Use of a Proxy Model**

CompTel strongly supports the Joint Board's recommendation to measure costs as the forward-looking economic cost of providing the supported services. Use of this method is consistent with economic theory and with the Commission's approach in other dockets implementing the 1996 Act. As the Joint Board concluded, forward-looking economic costs "best approximate the costs that would be incurred by an efficient competitor entering that market."<sup>18</sup> This standard will encourage carriers to operate efficiently, and will help keep the cost of providing universal service to reasonable levels.<sup>19</sup>

CompTel also supports the Joint Board's recommendation to use a cost proxy model to establish these costs. Use of a cost proxy is competitively neutral because it establishes the level of support without giving preferential treatment to any particular carrier's costs or network design and technology. As a result, every eligible carrier operating in an area would receive support on the same basis and at the same level. In addition, use of a cost proxy model encourages carriers to be efficient by removing any incentive they might have under other models to inflate their own costs. Finally, a cost proxy model is easier to administer because it can be operated using publicly-available data and does not involve proprietary systems or information.

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<sup>18</sup> *Recommended Decision*, ¶ 270.

<sup>19</sup> *Id.* ¶ 276.

## **B. Calculation of a Benchmark**

CompTel also agrees that a nationwide benchmark should be used to establish the level of support from the universal service mechanisms. A single benchmark sets a national affordability standard and leaves local or regional variances to the states, which are in the best position to address such concerns. A single benchmark also adds uniformity and predictability to the fund, reducing the possibility that funding mechanisms would favor providers operating in some regions of the country. Also, a national benchmark will help ensure that all areas of the country benefit from reductions in the cost of providing universal service. Finally, a national benchmark will be easier to administer than other alternatives.

The Joint Board's recommend benchmark appears to advance the objectives of a benchmark approach. A revenues based benchmark must, however, include all anticipated revenue sources, including revenues from providing the supported services, revenues from discretionary services such as call waiting, call forwarding, and voice mail, revenues from providing local and intraLATA toll services, and revenues from directory and yellow pages advertising.

In addition, it is important that a revenues-based benchmark be set using a representative sample of *urban* area revenues. Not only are comparable urban areas the reference point dictated by Section 254,<sup>20</sup> but this also is appropriate because existing rates in some less densely-populated areas may reflect the impact of other regulatory policies irrelevant to the cost of providing service in an area. Many rural cities already have basic telephone rates substantially below those of "low-cost" urban cities. For example, a 1994

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<sup>20</sup> 47 U.S.C. § 254(b)(3).



FCC study found that in Bell Atlantic territory, single line, residential, touch-tone service was priced at an average of \$21.90 per month in Washington, D.C., and \$24.88 per month in Baltimore, MD, but only \$14.73 per month in rural Ellwood City, PA (pop. 9,900).<sup>21</sup> Similarly, U S West charged \$21.55 per month in Minneapolis, MN and \$20.90 in Denver, CO, but only \$15.85 in Logan, UT (pop. 26,800) and \$18.22 in Butte, MT (pop. 37,200).<sup>22</sup> Even within a single state, service in less populated cities can be priced significantly lower than in densely populated areas. For example, NYNEX charged \$32.69 in Buffalo, NY and \$26.77 in New York City, but only \$22.89 in Massena, NY (pop. 12,800).<sup>23</sup> Indeed, the rates charged in all of the above urban areas exceeded each RBOC's average price for residential touch-tone service.<sup>24</sup> Obviously, many rural areas already are receiving local services at rates beyond that which should be supported by federal universal service policies. Such pricing should not be reflected in the calculation of a benchmark level.

**V. THE COMMISSION SHOULD PRECLUDE STATES FROM APPLYING ELIGIBILITY CRITERIA OTHER THAN SECTION 214(e) AND SHOULD CLARIFY THOSE CRITERIA**

As with collection of support, the distribution of universal service funds should be equitable and nondiscriminatory. CompTel agrees with the Joint Board's recommendation, therefore, that the Commission should adopt the statutory eligibility criteria contained in

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<sup>21</sup> FCC, Industry Analysis Division, *Reference Book: Rates, Price Indexes, and Household Expenditures for Telephone Service*, at 99-100 (July 1994) (reporting October 1993 rates).

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 112 (showing average prices, including touch-tone charges, of \$19.03 for Bell Atlantic, \$23.35 for NYNEX, and \$17.87 for U S West).

Section 214(e) of the Act, and should not condition eligibility on the satisfaction of other obligations suggested by some commenters.<sup>25</sup> Section 214(e) sets forth neutral, objective criteria for determining eligibility to receive universal service support. Any carrier that meets these criteria should be able to receive support from the federal universal service mechanisms. The Joint Board is correct that additional obligations, such as alleged "carrier of last resort" obligations, "are unnecessary to protect the incumbent and would chill competitive entry into high cost areas."<sup>26</sup> More to the point, however, such obligations also are contrary to the statute. Congress took the trouble to list the criteria upon which a carrier "*shall be eligible* to receive universal service support;"<sup>27</sup> neither the FCC nor state commissions may add to those criteria.

The Commission should clarify in its order that a carrier purchasing unbundled elements from an ILEC and combining such elements in order to provide the supported services satisfies Section 214(e)'s requirement that an eligible carrier use "either its own facilities or a combination of its own facilities and resale of another carrier's services."<sup>28</sup> As CompTel noted earlier in this docket, a carrier that purchases unbundled elements from an ILEC will pay the underlying carrier its true costs for the facility (computed without regard to universal service support) and therefore has assumed the financial obligation that the universal service system is designed to support.<sup>29</sup> Accordingly, it is appropriate to provide universal service

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<sup>25</sup> *Recommended Decision* at ¶¶ 155-57.

<sup>26</sup> *Id.*, ¶ 156.

<sup>27</sup> 47 U.S.C. § 214(e)(1).

<sup>28</sup> *Id.* § 214(e)(1)(A).

<sup>29</sup> *See* CompTel Reply Comments (May 7, 1996), pp. 12-13.

support to the carrier purchasing the element, rather than to the underlying provider of the facility. Such a standard would give all retail providers an equal chance to participate in universal service support mechanisms. It also would further the development of local services competition by not favoring any particular class of retail providers with support payments.

Although there is some room for doubt, the Joint Board appears to agree with this conclusion. At paragraph 155 of the *Recommended Decision*, the Joint Board emphasizes that a carrier may meet the eligibility criteria of Section 214(e) "regardless of the technology used by that carrier," citing with approval to CompTel's comments at p. 16.<sup>30</sup> At page 16 of its initial comments, CompTel argued that a carrier purchasing unbundled elements to provide service was using its "own" facilities for purposes of determining universal service support. It appears by this citation that the Joint Board meant to include the purchase of unbundled network elements as a method meeting the criteria of Section 214(e). Nevertheless, the Commission should make this interpretation explicit, in order to avoid any confusion when the states apply the criteria of Section 214(e).

## **VI. OTHER ISSUES**

### **A. Billing Issues**

In its comments to the Joint Board, CompTel recommended that carriers contributing to universal service support mechanisms be permitted to recover such contributions from their retail end users via a separate line-item on customer bills, if they chose to do so.<sup>31</sup> A line-

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<sup>30</sup> *Recommended Decision*, ¶ 155.

<sup>31</sup> *See*, CompTel Reply Comments (May 7, 1996), p. 5.

item on customer bills would be consistent with Section 254's requirement that support mechanisms be explicit and predictable.<sup>32</sup> In addition, such treatment is consistent with the way in which other types of taxes are identified, including state and federal excise taxes, sales taxes, and gross receipts taxes. It also would allow carriers to ensure that their prices are in proportion to the costs caused by the particular use.<sup>33</sup> As Commissioner Ness noted, ultimately consumers are the ones that must pay for universal service;<sup>34</sup> they are entitled to know how much they are being asked to pay. Therefore, it is sound policy to allow carriers to make their own choice as to how to recover this additional obligation from their consumers.

It is not clear what position the Joint Board has taken on this issue. The *Recommended Decision* does not explicitly refer to CompTel's line-item proposal, and does not make a recommendation as to how contributing providers may obtain the funds that they pay to support universal service. However, some ambiguity is created by the Joint Board's statement that support funds should be recovered through a revenues-based charge and should not be funded "through the SLC or a retail end-user surcharge."<sup>35</sup> If by this the Joint Board

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<sup>32</sup> 47 U.S.C. § 254(b)(5).

<sup>33</sup> For example, in the Commission's recent *Payphone Reclassification* docket, it found that carriers should have the flexibility to determine how to recover the new payphone surcharge, in part because this approach would permit carriers to impose the charges on those that create the costs. *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, CC Docket No. 96-128, FCC 96-388, ¶ 83 (Sept. 20, 1996).

<sup>34</sup> Separate Statement of Commissioner Susan Ness, at 2.

<sup>35</sup> *Recommended Decision*, ¶ 812; See also Separate Statement of Commissioner Laska Schoenfelder Dissenting in Part, at 2 ("I would also like to express my reservations about not providing explicit notification on customers' bills about the charges assessed to fund these programs. Consumers are entitled to be made aware of the charges that they are paying to support the recommendations made herein.").

means that carriers are precluded from identifying that portion of the charge attributable to universal service, CompTel disagrees.<sup>36</sup>

Such a prohibition clearly would violate a telecommunications provider's right to free speech under the First Amendment to the United States Constitution. Line-item identification of the source and amount of universal service obligations is speech, just as a separate bill insert informing consumers of the FCC's policies and their effect would be speech subject to the First Amendment's strictures. The government may not restrict truthful, nonmisleading speech (concerning a lawful activity) except where a restriction directly advances a substantial governmental interest and the restriction is no broader than necessary to advance that interest.<sup>37</sup> Moreover, complete bans on a type of speech are "particularly dangerous" and demand "rigorous review" under the First Amendment.<sup>38</sup> As the Supreme Court emphasized earlier this year, courts are "especially skeptical of regulations that seek to keep people in the dark for what the government perceives to be their own good."<sup>39</sup>

No legitimate governmental purpose can be served by prohibiting carriers from identifying universal service support payments as a separate line-item customer bills. Even if a government interest existed, a complete ban on this method of speech is far more intrusive than would be necessary to accomplish the objective. Indeed, it appears that the only

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<sup>36</sup> It is possible that the Joint Board's reference to a "retail end-user surcharge" is meant to refer to a flat charge, similar to the SLC, that would apply to the purchase of telecommunications services. Such a surcharge is different from the line-item identification CompTel proposes, however.

<sup>37</sup> *Central Hudson Gas & Elec. Corp. v. New York Public Service Commission*, 447 U.S. 557, 564 (1980); *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumers Council*, 425 U.S. 748 (1976).

<sup>38</sup> *44 Liquormart, Inc. v. Rhode Island*, 116 S.Ct. 1495, 1507 (1996).

<sup>39</sup> *Id.* at 1508.

purpose of such a ban would be to "keep people in the dark" regarding the extent to which they are being asked to support universal service policies.<sup>40</sup>

Moreover, a ban on the separate identification of universal service support obligations is not consistent with the imposition of a revenues-based charge on carriers. "Revenues" for such purposes typically are expressed exclusive of applicable taxes, such as state and federal sales or excise taxes. Therefore, it would be appropriate for a carrier to separately identify its charges for a service (*i.e.*, its "revenues") from the applicable universal service charge. To require a carrier to build universal service contributions into its gross charge for a service would cause the contribution itself to be treated as revenues, which would then be subject to federal and state taxes -- and, ironically, to the universal service tax itself. Accordingly, CompTel recommends that the Commission clarify that carriers are permitted to determine for themselves how to recover the additional funds that must be paid to support universal service.

## **B. The Subscriber Line Charge (SLC)**

In the course of its *Recommended Decision*, the Joint Board makes a number of recommendations regarding the level of the federal subscriber line charge (SLC).<sup>41</sup> CompTel agrees with Commissioner Chong that these issues are beyond the scope of this docket, and should not be considered here.<sup>42</sup>

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<sup>40</sup> Cf. Schoenfelder Statement at 2.

<sup>41</sup> *Recommended Decision*, ¶¶ 769-773.

<sup>42</sup> Chong Statement at 11.

The SLC is relevant to this proceeding for only two reasons. First, some have claimed that some portion of the SLC represented a subsidy for universal service. Therefore, it was relevant to examine the SLC to determine to what degree, if any, it operated to support universal service. Second, some recommended the SLC as an explicit, competitively neutral mechanism by which universal service in the future could be supported. Therefore, it also was appropriate for the Joint Board to consider whether as a policy matter the SLC should be used to fund the new universal service support mechanisms being developed in this docket.

Other than these two limited issues, however, the size and function of the SLC is an access reform issue, not an universal service issue. Whether the SLC or some similar charge is an appropriate way to recover non-traffic sensitive loop costs is an issue which must be considered as part of the Commission's upcoming review of carrier access charges. The Commission should not prejudge this review by making decisions in this docket based upon an incomplete examination of the issue. Accordingly, CompTel urges the Commission to postpone decisions regarding the appropriate level of the SLC until they can be considered in conjunction with the access reform docket.

## **CONCLUSION**

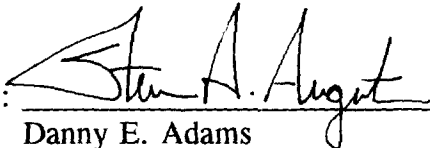
For the foregoing reasons, the Commission should adopt the majority of the Joint Board's recommendations. It should explicitly adopt "competitive neutrality" as a guiding principle for universal service policies and should determine the equitable level of each provider's support contribution with reference to the entity's total interstate and intrastate revenues. In addition, the Commission should base the high cost fund on the forward-looking, efficiently incurred costs of providing service, as determined by use of an

appropriate cost proxy model, and should clarify the eligibility criteria set forth in Section 214(e) for the receipt of universal service support payments. Finally, the Commission should not preclude carriers from recovering universal service support from their retail end users, and should leave the method by which a carrier does so up to the carrier's discretion.

Respectfully submitted,

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## CERTIFICATE OF SERVICE

I hereby certify that the attached Comments of the Competitive Telecommunications Association was either hand-carried and/or mailed on this 19th day of December, 1996 by first class mail, postage prepaid, on the following parties:

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